

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

Citibank August 11, 2020 Wire Transfers

Case No. 1:20-cv-06539 (JMF)

**DECLARATION OF FREDERICK
BAILY DENT**

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I, Frederick Baily Dent III, being duly sworn, state the following under penalty of perjury:

1. I am a resident of the Commonwealth of Massachusetts, over the age of 18, and competent to make this statement.

I. Introduction

2. I am an equity member and portfolio manager at New Generation Advisors, LLC (“New Generation LLC”). I have worked at New Generation LLC for fourteen years and have been an equity member for approximately twelve years. I submit this declaration as my testimony in support of New Generation LLC’s defense to claims asserted by Citibank, N.A. (“Citibank”) in this action.

3. I have first-hand knowledge of the facts set forth in this declaration. Among other things described below, I am familiar with New Generation Loan Fund Limited Partnership (“New Generation LP”)’s holdings in the 2016 Revlon Term Loans, and the events surrounding Citibank’s transfer of funds in repayment of those loans on August 11, 2020.

4. As I will discuss in greater detail below, Citibank transferred funds to New Generation LP, late on August 11, 2020, in the exact amount New Generation LP was owed on the Term Loans. The funds were accepted for deposit into New Generation LP’s account, and

the transfers were not accompanied by any notice, or indication of any sort, that they had been sent by mistake. It was not until nearly 20 hours later that Citibank first circulated “error notices” claiming that there had been a mistake. I personally learned of the August 11 Transfer and the error notices at around the same time on August 13. If not for those notices it would have seemed obvious to me that the transfer was intended as a pre-payment on the Term Loans. But for those notices, it would not even have occurred to me that the transfer could have been by mistake.

II. **Background**

5. New Generation LLC is a fund manager and New Generation LP is an investment fund. New Generation LP is the legal entity that invested in the 2016 Term Loans. New Generation LP, in turn, is the entity that holds an account at Northern Trust, which received a payment from Citibank on August 11, 2020. New Generation LLC is the general partner of New Generation LP. New Generation LP primarily invests in distressed companies.

6. In my role as an equity member, I manage a portfolio of investments on behalf of New Generation LP. My responsibilities, include, for example, keeping myself informed about distressed investing generally and particular opportunities, analyzing the merits of specific investments (such as the 2016 Term Loans at issue in this case), and assessing whether and when we should exit investments.

III. **The Revlon 2016 Term Loans**

7. As of August 11, 2020, New Generation LP held 2016 Term Loans issued by Revlon under the 2016 Credit Agreement. New Generation LP was, accordingly, a lender to

Revlon at that time. Out of the entire facility, New Generation LP held approximately \$2,735,788.12 principal value of the 2016 Term Loans. DX-0364 is a true and correct copy of the calculation statement received from Citibank on August 11, 2020, which shows that our outstanding principal balance was \$2,735,788.12.

8. August 11, 2020 was not a scheduled interest payment date on the 2016 Term Loans.

9. I was not aware, as of August 11, of any plan by Citibank or Revlon to repurchase 2016 Term Loans from selected lenders that day, or to pay interest to all of the 2016 Term Lenders in connection with such a transaction. Citibank did not provide any notice to New Generation LP nor to New Generation LLC that such repurchases were going to occur nor that interest was being paid in connection with repurchases.

IV. **The August 11 Transfer**

10. At or around 5:58 P.M. EDT on August 11, 2020, New Generation LP received a wire transfer totaling its outstanding principal and interest under the 2016 Term Loan. The funds were accepted for deposit into New Generation LP's account at Northern Trust. The description in the wire transfer stated the payment was in connection with the 2016 Term Loan. A true and correct copy of the transaction confirmation is DX-0851.

11. The amount that New Generation LP received was identical to the outstanding principal and accrued interest owed under the 2016 Term Loans as of August 11, 2020.

Specifically, New Generation LP received \$2,759,688.27, which breaks down as follows:

Lender Name	Principal Outstanding as of August 11, 2020	Accrued Interest Outstanding as of August 11, 2020	Total Payment by Citibank on August 11, 2020
New Generation LP	\$2,735,788.12	\$23,900.15	\$2,759,688.27

12. The transfers were sent by wire to the same bank and same account as all past payments by Citibank in connection with the 2016 Term Loan. The transfers were not accompanied by any notice of mistake nor other documentation indicating that the funds had been sent in error. Upon receipt of the payment, Northern Trust, which handles New Generation LP's bank accounts, did not notify anyone at New Generation that they believed they had received a mistaken payment. I am not aware of anyone at New Generation nor at Northern Trust having reached the conclusion that the payment was made in error on August 11.

13. I learned of the August 11 payments on the 2016 Term Loans, and that Citibank circulated notices the following day claiming those payments had been made by mistake, on the morning of August 13, 2020. That morning, I participated in a conference call with other managers whose clients were Term Lenders and with Quinn Emanuel, which had previously been retained by UMB Bank. During that call, I inquired internally at New Generation LLC by e-mail about whether New Generation LP had been paid on the Term Loans.

14. At 11:07 A.M. EDT on August 13, 2020, I e-mailed Darren Beals, who works in New Generation LLC's back office, to ask whether New Generation LP had received a payment from Citibank on the 2016 Term Loans. A true and correct copy of that exchange is DX-0645. Before I e-mailed Mr. Beals, I was not sure whether New Generation LP had received a payment or not. I knew that other Term Lenders had received payments on their Revlon Term Loans on August 11 and I also knew that other Term Lenders had received error notices from Citibank the day after receiving the payments. I therefore asked Mr. Beals: "Did we receive a payment from Citibank on our Revlon loan? Supposedly it was accidentally paid off in full yesterday but don't return it until hear from me." DX-0645. Mr. Beals wrote back to me at 11:09 A.M. that we had received interest and "principal by mistake." I understood Mr. Beals's reference to a "mistake"

to be based on the same August 12 error notices that I had referenced in my initial e-mail by the adverb “accidentally[.]” Mr. Beals also told me that Northern Trust was going to return the money to Citibank. At 11:10 A.M., I told Mr. Beals to contact Northern Trust immediately and to instruct them not to return the money.

15. It was clear, in light of its recall notices, that Citibank was claiming it was entitled to recall the funds it had transferred on August 11, and that there would be a dispute, even possibly litigation. Therefore, in order to be prudent, New Generation LLC instructed Northern Trust to hold the August 11 payments so that the money would be frozen until the issue was sorted out, and, indeed, the funds now remain in suspense pursuant to a Temporary Restraining Order issued in this case on August 21, 2020.

16. I consider the 2016 Revlon Term Loan to be paid off for New Generation LP, and indeed generally view loans as paid off upon receipt of the outstanding amounts owed.

V. **Prior to Citibank’s Recall Notice, There Was No Reason to Believe the Payments Were Mistaken**

17. There was nothing about the August 11 Transfer, other than the error notices that Citibank sent the following day, that gave any indication that the transfer could have been made by mistake. As detailed above, the payment was received, and accepted for deposit into New Generation LP’s account, late in the day on August 11, 2020. The payment was made without any accompanying “error notice,” and without any other indication of a mistake.

18. It was not until approximately 20 hours later that Citibank started sending notices claiming that the payments were mistaken. It would not have even seemed plausible to me, but for the fact that Citibank sent those notices, that the payment had occurred by mistake.

- a. **The payments were in the exact amount of outstanding principal and accrued interest owed to each client.**

19. New Generation LP received on August 11, 2020 the exact amount that was owed to New Generation LP—precisely the amount of outstanding principal and accrued interest to that date. To me, that would provide strong indication that Revlon was intentionally paying down the full loan to each lender that received payments.

20. It would have been inconceivable to believe that Citibank would have accidentally paid New Generation LP, or the larger universe of lenders on the Revlon Term Loans, exactly the amounts they were owed in principal and interest on outstanding loans. I have never before seen a bank or any financial institution send the exact amounts owed on outstanding loans by mistake.

b. **The payments were received in the middle of an interest period, which is highly indicative of a prepayment of the loan.**

21. Interest was not scheduled to be paid on the Term Loans until the end of August. There was no interest payment scheduled on August 11, 2020. Nevertheless, the August 11 Transfer was accompanied by a notice saying that interest was “due.” The only apparent reason that interest would have become “due” on August 11 is if the full loan was being paid down. In my experience, it is not uncommon for a loan to be prepaid; and, when it is, interest becomes due and is typically paid at the same time.

c. **I presume that Citibank, a huge, sophisticated financial institution, has many protections in place to prevent sending out erroneous payments.**

22. I have long presumed that Citibank, as one of the largest and most sophisticated financial institutions in the world, has multiple levels of internal controls and safeguards in place to prevent mistaken payments.

23. Absent Citibank’s assertion of error, it would have seemed far more likely to me that Citibank had made the August 11 payments on purpose but without a contemporaneous

notice, than that Citibank had accidentally transferred millions of dollars to New Generation LP in the exact amount New Generation LP was owed.

- d. **Revlon's alleged liquidity issues did not suggest that the payment was a mistake.**

24. It would have seemed entirely plausible to me that Revlon would pay down the Term Loan, regardless of its financial difficulties. New Generation LP was paid just \$2,759,688.27, which was well within the amount that a large company like Revlon, even with its financial strains, could have paid without much difficulty.

25. Given my familiarity with Revlon, it also would have seemed entirely plausible to me that it could pay the Term Loans, regardless of its financial difficulties. Revlon, and its long-time sponsor, Ronald Perelman, are famous for effecting strategic transactions, and keeping Revlon alive and out of bankruptcy. Indeed, as recent as May 2020, Revlon raised nearly \$1 billion despite reported liquidity constraints.

VI. **New Generation LP's Direction to UMB Bank was Unrelated to the August 11 Payments**

26. I also understand that Citibank has argued that the filing of the UMB Action against Revlon, Citibank, and others on August 12, 2020, was an indication that managers like New Generation LLC believed the 2016 Term Loans had not been paid off as of that date. That is wrong.

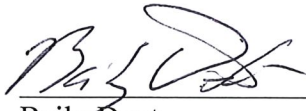
27. New Generation LP authorized UMB Bank to commence the action on August 5, 2020. The direction to UMB Bank occurred well before the August 11 transfer and, of course, was wholly unrelated to payments that were not made until a week later. At the time the UMB complaint was filed, I was not aware of the August 11 transfer.

* * *

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

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Dated: November 12, 2020
Boston, Massachusetts



Bailey Dent